



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Unholtz-Dickie Corporation
File: B-235561
Date: August 30, 1989

DIGEST

Where a bidder certifies that it will supply domestically manufactured end items in response to a solicitation which is set aside for small business, subsequent challenges to its eligibility to participate in the procurement as a result of the certification are matters for resolution by the Small Business Administration, not the General Accounting Office.

DECISION

Unholtz-Dickie Corporation protests the award of a contract to Ling Dynamic Systems, Inc., under invitation for bids (IFB) No. N00421-88-B-0260, issued by the Department of the Navy as a total small business set-aside for a vibration test system. The protester alleges that Ling does not qualify for participation in the set-aside because its equipment is not manufactured by a domestic small business.

We dismiss the protest.

In its bid, Ling completed the "Small Business Concern Representation" by indicating that "all end items to be furnished will be manufactured or produced by a small business in the United States" See Federal Acquisition Regulation (FAR) § 52.219-1. Because Ling also indicated that its parent company was located in the United Kingdom, the contracting officer requested verification of Ling's small business representation; in response, Ling indicated that it was a small business but stated that not all end items would be produced in the United States.

In light of the conflicting statements, the contracting officer filed a protest on December 14, 1988, with the Small Business Administration (SBA) pursuant to FAR § 19.302(b),

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in order to have the SBA determine whether Ling was eligible to participate in the set-aside. After its review of the matter, SBA, on January 17, 1989, issued a decision which found that Ling was eligible to participate in the procurement; that determination specifically found that, for the purposes of Ling's small business eligibility, all end items to be furnished by the firm were considered to be manufactured in the United States. Ling was subsequently awarded the contract.

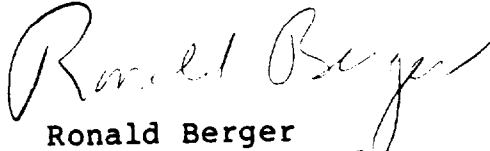
Unholtz-Dickie protests the award alleging, for a number of reasons, notwithstanding the SBA decision with which it disagrees, that Ling's bid fails to establish that the firm will furnish small business domestic end products. On the threshold question of our jurisdiction in the matter, the protester argues, citing Insinger Mach. Co., B-234622, Mar. 15, 1989, 89-1 CPD ¶ 277, that the certification in the IFB concerning end products involves bid responsiveness, and is, therefore, an issue for our Office to decide.

Unlike here, where Ling checked the IFB certification that it would supply small business end items manufactured in the United States, the cited decision involved a situation where the bidder was properly found to be nonresponsive because of its failure to certify that it would furnish domestic end products. As a result, that bidder failed to establish the required legal commitment to furnish domestic small business end items. Here, Ling made that commitment by certifying in its bid that all end items would be domestically manufactured by small business. Notwithstanding Unholtz-Dickie's suggestions to the contrary, the awardee's subsequent correspondence to the contracting officer did not have the effect of amending the certification contained in its bid.

Once such a performance commitment is established, questions concerning a bidder's willingness or ability to fulfill that commitment are not matters of responsiveness. Any subsequent challenge to a firm's eligibility for the award of a small business set-aside on the grounds that the firm will furnish foreign products or items with foreign components must be resolved by the SBA rather than by our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1988); Committee of Domestic Steel Wire Rope & Specialty Cable Mfrs.--Reconsideration, B-208801.2, Nov. 16, 1982, 82-2 CPD ¶ 448. Here, when the contracting officer had doubts about Ling's small business certification, he properly followed the procedures set forth in FAR § 19.302 by referring the matter to SBA; by statute, that agency is empowered to exclusively

determine such matters of eligibility for federal procurement purposes. See 15 U.S.C. § 637(b)(6) (1982).^{1/} The SBA determined that the awardee would be engaged in assembling components into the end item to be furnished and that this activity constituted manufacturing such that Ling would be providing a product manufactured in the United States. See Michigan Instruments Corp., 60 Comp. Gen. 397 (1981), 81-1 CPD ¶ 302. That determination is controlling here.

The protest is dismissed.



Ronald Berger
Associate General Counsel

^{1/} In view of the SBA's determination that Ling would supply domestic end products, we view Unholtz-Dickie's remaining ground of protest--that the awardee knowingly misrepresented the origin of its end products as being domestic--as academic.